

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:

**ED'S BEANS, INC., D/B/A
CRAZY MOCHA, CRAZY MOCHA
COFFEE, CRAZY MOCHA COFFEE
COMPANY, KIVA HAN, KIVA HAN
COFFEE, KH AND KHC,**

Bankruptcy No. 20-22974-CMB

Chapter 11

Document No.

Debtor.

**BAUM BOULEVARD INVESTORS LP,
Movant,**

v.

**ED'S BEANS, INC., D/B/A
CRAZY MOCHA, CRAZY MOCHA
COFFEE, CRAZY MOCHA COFFEE
COMPANY, KIVA HAN, KIVA HAN
COFFEE, KH AND KHC,**

Respondent.

**EXPEDITED MOTION TO COMPEL IMMEDIATE REJECTION OF LEASE
AND SURRENDER OF POSSESSION OF PREMISES AND FOR
THE ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIMS**

AND NOW, Baum Boulevard Investors, by its undersigned counsel, hereby files the within Motion to Compel Immediate Rejection of Lease and Surrender of Possession of Premises and for the Allowance and Payment of Administrative Claims:

Jurisdiction and Venue:

1. This matter is a core proceeding and this Honorable Court has jurisdiction pursuant to *28 U.S.C. 1334*.
2. Venue is proper in this district pursuant to *28 U.S.C. 1408 and 1409*.
3. The Movant, Baum Boulevard Investors LP (Baum), seeks relief pursuant

to 11 U.S.C. 365 and 11 U.S.C. 503.

Background:

4. On October 19, 2020, Ed's Beans, Inc. (Ed's Beans), filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (*11 U.S.C. 101 et seq.*) in the United States Bankruptcy Court for the Western District of Pennsylvania.

The lease:

5. Baum is the owner of real property located at 5607 Baum Boulevard, Pittsburgh, PA, 15206.

6. On February 15, 2012, Baum entered into a non-residential Lease Agreement with the Debtor for use of commercial space in the Property for a Crazy Mocha store (the "Lease Agreement").

7. The Lease Agreement has a 10-year term which ends on September 31, 2023.

8. The Debtor owes Baum a minimum rental payment under the Lease Agreement in the amount of \$6,097.00 per month.

9. In addition, the Debtor is responsible for additional charges under the Lease Agreement, including real estate tax charges, utilities, insurance charges and CAM fees. These additional charges total approximately \$1000.00-1500.00 per month.

The defaults:

10. Ed's Beans has failed to remit the monthly rental payments and other charges due under the Lease Agreement.

11. Such default first occurred on April 1, 2020, when Ed's Beans failed to

remit the rental payments and other charges due for April of 2020 and has continued every month thereafter.

12. As of the time of the filing of the within Motion, the current outstanding amount due under the Lease Agreement is \$95,511.00.

13. The sum of \$46,507.00 is due for post-petition rent, which should be treated as an administrative expense pursuant to *11 U.S.C. 503 (b) (1) (A)*.

Relief requested:

14. Baum requests an Order that compels the Debtor to reject the lease and surrender the premises pursuant to *11 U.S.C. 365 (d)*. Baum is entitled to such relief as the result of the Debtor's failure to pay the post-petition rental payments due under the Lease Agreement. Baum should not have the burden of storing and preserving the Debtor's inventory while the Debtor fails to make the payments due.

15. Baum also requests an Order which allows an administrative expense claim for the post-petition rent. *11 U.S.C. 503 (b) (1) (A)* provides for an administrative expense claim for "administrative expenses... including the actual, necessary costs and expenses of preserving the estate." Baum has provided benefits to the Debtor's estate by way of storing and preserving the Debtor's inventory located within the premises. As such, the post-petition rent due to Baum must be deemed to be an allowed administrative expense claim.

CAUSE FOR EXPEDITED HEARING

16. The need for an expedited hearing herein has not been caused by any lack of diligence on the part of Baum or Baum's Counsel.

17. Rather, Baum learned late last week that, despite representations to this

Court that the Debtor would be prepared to move forward with a sale hearing on April 27, 2021, such sale hearing will not proceed as scheduled, and that an entirely new course has been selected that will delay proceedings, without any indication of the Debtor's willingness or ability to pay post-petition rent in the interim.

18. Numerous other matters are set to be heard in this Bankruptcy Case on April 27, 2021 at 10:00 a.m.

19. Moreover, the Debtor has continually failed to timely pay Baum post-petition rent, as required by the Bankruptcy Code.

20. Baum will suffer further and compounding economic harm if it is forced to continue operations without receiving timely payment for rent and CAM charges.

21. In light of the foregoing, just cause exists for the Court to consider this Motion on an expedited basis.

Wherefore, the Movant respectfully requests that this Honorable Court enter an Order: (1) declaring the Lease Agreement Rejected; (2) providing for Debtor to remove its property from the premises in 10 days; and (3) granting Baum's administrative claim.

Respectfully Submitted,

Dated: April 23, 2021

/s/ Robert O Lampl
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PA I.D. #62297
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Respondent.

CERTIFICATE OF SERVICE

I, Robert O Lampl, hereby certify that on the 23rd day of April, 2021, I served true and correct copies of the within **Expedited Motion** upon the following (*via Electronic Service*):

Office of the U.S. Trustee
970 Liberty Center
1001 Liberty Avenue
Pittsburgh, PA 15222

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Dated: April 23, 2021

/s/ Robert O Lampl _____
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